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No. 10 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1958

UNITED STATES OF AMERICA, PLAINTIFF
v.
STATE OF LOUISIANA

REPLY BRIEF OF THE STATE OF LOUISIANA ON MOTION TO DISMISS ON JURISDICTIONAL GROUNDS

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QUESTIONS PRESENTED

1. Whether this Court has jurisdiction to determine the boundaries of Louisiana when Congress has passed no law locating such boundaries.

2. Whether this Court has the power to determine the foreign policy of the United States with respect to its territorial claims against nations and with respect to the freedom of the seas and the jurisdiction of the State and the nation therein.

3. Whether this Court has original jurisdiction of a suit brought by the United States against a sovereign State without the consent of the latter.

STATEMENT

The preliminary statement in the brief of the United States sets forth the chronology of the procedure in this cause up to the present time. It inaccurate-

ly sets forth the purpose and effect of the Submerged Lands Act of May 22, 1953, and incorrectly states what Louisiana's claims are with respect to its boundaries in the Gulf of Mexico. These matters are, however, irrelevant to the question as to the power of this Court to hear and determine this cause. Louisiana will at the proper time set forth in detail its claims and will present its views concerning the purpose and effect of the Submerged Lands Act.

ARGUMENT

I

THIS CONTROVERSY INVOLVES POLITICAL QUESTIONS BEYOND THE JURISDICTION OF THIS COURT

The United States, which will sometimes be be referred to as the Government or the Plaintiff for convenience, has incorrectly stated the first question presented to this Court. A reading of the complaint and the brief in support thereof shows that this Court has been asked to ascertain the international boundary of the United States and the seaward boundary of the State of Louisiana; (which this Court has always stated as identical) although such boundary has not been fixed by the political branches of the Government, and to establish the rights of the United States in the bed of the Gulf of Mexico extending from the State boundary seaward to the edge of the Continental Shelf, and for such purpose to determine the foreign

policy of the United States with respect to its territorial claims against other nations and with respect to recognition of freedom of the seas. What the Government seeks is to have a declaration of principles of international law which are peculiarly the function of the political branches of the Government.

Paragraph 2 of the complaint alleges that the United States "is entitled to exclusive possession of, and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, extending seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Louisiana to the edge of the Continental Shelf." The prayer of the complaint is that this Court declare the rights of the United States in these properties "extending seaward to the edge of the Continental Shelf;" and to require the State of Louisiana to account for money derived from these properties.

On page 9 of the Government's brief in support of its motion for leave to file the complaint, the purpose of this litigation is stated as follows:

> "The purpose of this litigation is to establish the rights of the United States in the lands and natural resources of the bed of the Gulf of Mexico . . . extending seaward to the edge of the Continental Shelf."

The Government's original brief in support of the complaint incorrectly refers to the Submerged Lands Act as a grant in favor of the State and states

the purpose of Congress in passing the Act, as follows: (Page 11)

> "Congress intended the grant to be coextensive with the State boundary, wherever that boundary might be . . . Congress expressed no view as to the location of the boundary, intending and expecting any dispute regarding its location to be determined by this Court."

In a footnote Plaintiff's brief quotes the Congressional Record on this subject.

Plaintiff's present brief (p. 4) indicates that Louisiana's boundary has already been established by the political branches of the government and that the United States merely seeks a judicial declaration in accordance therewith, but in the complaint and in the original brief (p. 11) the Government says that this boundary has not been established.

If Congress has not fixed the state's boundary, this Court cannot fix it. Nor can the Congress delegate this power to the Court.

Furthermore, on page 13 of its original brief the United States say that "Louisiana's boundary, when it was admitted to the Union, was limited to the extent of the National Maritime Boundary." Although the Government apparently seeks from this Court a declaration that the National Maritime Boundary extends to the edge of the Continental Shelf, it in so many words admits that the boundary of Louisiana and the National Maritime Boundary are coextensive. This Court has, of course, always stated that the

boundaries of the United States are coextensive with and do not extend beyond the boundaries of the coastal States.[1]

It therefore appears that the position that is now taken by the Government conflicts with and is inconsistent with the position that it took in the complaint and its brief in support thereof.

II

THIS COURT HAS NO POWER TO DETERMINE THE FOREIGN POLICY OF THE UNITED STATES NOR TO FIX ITS TERRITORIAL LIMITS.

Although the Government now states that the purpose of this suit is to ascertain where Louisiana's boundaries have been established by the political branches of the Government and that this requires the settlement of a dispute as to the results of past actions by said branches of the Government, this is not the purpose of the original complaint. As pointed out above, the prayer of the complaint calls for a decree to establish the rights of the United States in the bed

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[1] Harcourt v. Gaillard, 12 Wheat. 523, 6 L.Ed. 716;
Dred Scott v. Sanford, 19 How. 393, 446-449, 15 L.Ed. 691, 718-9;
Brown v. Grant, 116, U.S. 207, 212, 29 L.Ed. 598;
Commonwealth of Mass. v. Manchester, 152 Mass. 230, 25 N.E. 113, 116, aff'd, 139 US 240, 11 S. Ct. 559, 35 L.Ed. 159;
Van Brocklin v. Anderson, 117 US 151, 168, 29 L.Ed. 845, 851.

of the Gulf of Mexico, and the brief in support of this complaint states that the boundaries of the State and nation have not been fixed in the Acts of Congress relied upon by the Plaintiff. Following this, the Government's original brief states that although the immediate issue concerns the extent of Louisiana's proprietary rights and jurisdiction in the Gulf of Mexico, nevertheless, it also says:

> "The Case requires inquiry into and application of the foreign policy of the United States, on the one hand with respect to its territorial claims against other nations, and on the other hand with respect to its assertion and recognition of freedom of the seas." (Orig. Br. p. 16)

The authorities cited in the State's brief in support of its motion to dismiss on jurisdictional grounds settled the proposition that these political questions cannot be determined by this Court.

III

THIS COURT HAS NO JURISDICTION FOR SUIT WITH THE UNITED STATES AGAINST A SOVEREIGN STATE WHERE THE LATTER HAS NOT GIVEN ITS CONSENT TO BE SUED.

In our original brief we pointed out that the Constitution nowhere provides for a suit by the United States against a State, and that the original jurisdiction of this Court, cannot be enlarged or extended by an Act of Congress. We also pointed out,

that the Eleventh Amendment prohibited suit against any State without its consent.

However, on page 7 of the Government's brief in opposition to the motion to dismiss on jurisdictional grounds, the point is made that in the original case of *United States v. Louisiana* the State "challenged the jurisdiction of this Court in 10 different documents filed at various stages of the case, 9 of which urged the point now under discussion." Plaintiff would have the Court conclude that Louisiana made 9 separate and distinct attacks on the Court's jurisdiction in that case and implies that the present motion to dismiss is simply a reiteration of former objections to the jurisdiction which this Court overruled. The statement and the implication are inaccurate. Louisiana did object to the assumption of jurisdiction in this Court in the former case, and in each subsequent filing attempted to reserve its rights under that objection. The Court overruled the former plea to the jurisdiction without comment in a memorandum decision in *United States v. Louisiana*, 338 US 806, 94 L.Ed. 488. The Court's decision on this plea was undoubtedly influenced by the view that it had already expressed in *United States v. California*, 332 US, 199 L.Ed. 1889 to the effect that the coastal States do not own any of the lands and minerals lying seaward from the ordinary low-water mark. The theory supporting this conclusion was nullified by Congress when it passed the Submerged Lands Act. As stated in *Superior Oil Com-*

pany v. Fontenot, 213 F.2d 565, 569, Cert. Den. 348 US 378, 99 L.Ed. 660:

> "So here, when the long and heated struggle over the title and right to possession of the land, which had been waged between the government and the state, came to an end in Public Law 31, the state and appellants, as its lessees, found themselves in one of two positions equally favorable in law. By virtue of the act which nullified the theory on which the opinion and decree of the Supreme Court had been based, they must be held, notwithstanding the opinion of the Supreme Court, to have always and at all times had the title and right of possession."

Since the theory supporting the Court's conclusions in the *California Case* and in the subsequent cases of the United States against Louisiana and Texas has been nullified, it is appropriate for the Court to reconsider the question of jurisdiction at this time.

It is furthermore necessary to look into the question of jurisdiction again because this particular proceeding involves questions which were not raised in the other cases and the motion to dismiss is based upon matters that are not the same as those decided by the Court on Louisiana's plea to the jurisdiction in the original case.

For instance, none of the subject matter discussed in the two preceding sections was presented in the original plea to the jurisdiction, and supporting

brief in the original Louisiana case. Nor were the questions raised concerning the constitutional limitations and provisions regarding the original jurisdiction of this Court discussed as fully then as they are now in the motion and brief filed by the State in this proceeding.

The Government states that since Louisiana was overruled on the question of jurisdiction in the earlier litigation, it "should be estopped to raise the point now." (Orig. Br. P. 7-8) The answer to that is that allegations unsuccessfully urged in prior litigation cannot serve as a basis for estoppel. In any event the doctrine of estoppel is not applicable and the Plaintiff cites no authorities to support its suggestion that an estoppel exists. Perhaps Plaintiff's counsel intended to say that the prior ruling of this Court is res judicata. However, the doctrine of res judicata does not apply to decisions on motions and other pleadings decided during the course of litigation. It is intended to apply to final judgments rendered.

Connally v. L. & N. R. R. Co., 297 Fed 180,
In re *Walton Hotel Co.*, 116 F2d 110;
Continental Oil Co. v. Osage Oil & Ref. Co., 69 F2d 19;
Hill v. United States, 56 S.Ct. 760, 298 US 460, 80 L.Ed. 1283.

CONCLUSION

The motion to dismiss should be sustained, but if the State of Louisiana is required to answer the bill

of complaint then it should be granted a period of 30 days at least within which to file its answer.

Respectfully submitted,

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August, 1956.

PROOFS OF SERVICE

I, ..., one of the Attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the ..... day of ....., 1956, I served copies of the foregoing Reply Brief of the State of Louisiana on Motion to Dismiss on Jurisdictional Grounds, by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

....."